UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SPRINGFIELD TERMINAL RAILWAY COMPANY, Petitioner, v. SURFACE TRANSPORTATION BOARD and UNITED STATES OF AMERICA, Respondents.	)	No. 04-12705-RGS

ADDENDUM NO. 1 TO RESPONDENTS' BRIEF

SERVICE DATE

JUN 15 1979

EC INTERSTATE COMMERCE COMMISSION

DECISION

EX PARTE NO. 328

INVESTIGATION OF TANK CAR ALLOWANCE SYSTEM

Decided: June 14, 1979

By Notice of Proposed Rulemaking and Order served July 14, 1976, we instituted this proceeding, under 49 U.S.C. §§ 11122 and 10747, formerly sections 1(14) and 15(15) of the Interstate Commerce Act, to examine the mileage allowance system of compensation for privately-owned tank cars, to develop methods for its continuing smooth functioning, or to devise an alternate method of compensation to those who furnish privately-owned tank cars. The parties to this proceeding proposed that a joint committee, composed of representatives of the railroads, tank car leasing interests, and shipper interests, be formed to collect and evaluate tank car cost and utilization data and to submit proposed solutions for the issues enumerated by our Notice.

By order served September 16, 1976, we authorized formation of the joint committee and held this proceeding in abeyance. Pursuant to this order the committee submitted periodic reports indicating progress toward ultimate resolution of the issues in this proceeding. A mutually acceptable compromise solution was reached by the committee representatives, on behalf of all tank car providers and railroads who are parties to this proceeding. Railroad acceptance of the terms of the agreement for application to tank cars was made on the basis that such acceptance shall not be construed as acceptance of those terms for application to other privately owned cars. On May 1, 1979, the parties filed a joint petition seeking our adoption of their agreement which resolves all outstanding issues. Accordingly, it appears that this matter is now ripe for determination.

[illegible] follows:

II -- [illegible] ION

(a) Equalization Ratio and [illegible] 1979

The tank car [illegible] ation ratio shall be 106 percent for the calendar year 1979, [illegible] published for the calendar year 1978, except that equalization for the year 1979 will be subject to the return route Item which is required to be published in Item 125 of the Mileage Allowance Tariff [1] by paragraph (c) of this Section.

(b) Equalization Ratio and Rules for 1980 and Subsequent Years

The tank car mileage equalization ratio for 1979 shall remain in effect thereafter until material changes in the conditions and practices of tank car movements indicate the need for a new movement study. Appropriate changes in the ratio and rules may then be made to comport with its results.

Notwithstanding the foregoing, the equalization ratio and rules may be changed on the basis of the original movement study, for 1980 and subsequent years, so long as equally significant offsetting changes benefiting both railroads and car providers are simultaneously published.

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[1] Wherever the Mileage Allowance Tariff is referred to it shall be understood to include all supplements and reissues of the tariff now published effective March 1, 1979, as PHJ 6007-F.

(c) Reverse Empty

Appropriate tariff language will be placed in Item 125 to provide for (1) a penalty (at the same level per mile as the equalization excess mile penalty) for non-railroad parties "short-routing" empty cars back to the immediately prior loading point (such penalty mileage to be eliminated from equalization accounting); and (2) for an equalization adjustment by the erring carrier to the car owner when, because reverse empty routing is not followed by the carriers, excess empty mileage due to the use of different interchange points, or carriers, is incurred.

(d) Updating Excess Empty Mileage Charge

The cents per mile equalization Excess Empty Mileage Charge in Item 120 D(1) of the Mileage Allowance Tariff shall be adjusted annually by the application of a percentage factor calculated and applied as follows:

> Index numbers will be established for the base year 1978 and each subsequent year by dividing the total Class I Railroad operating expenses and taxes (from the new Uniform System of Accounts) by the Class I freight train loaded and empty mileage (from the same source). The index number for the base year 1978 will then be divided into the current year's index number to establish the percentage factor. That percentage factor will be applied to 18 cents per car mile, and, the result will be rounded to the closest cent per mile.

The annually updated [illegible] Empty Mileage Charge, so determined, shall be published at the same time as the tank car mileage update to become effective on or within two months after July 1 of each year, for application to the entire current calendar year.

(e) Exceptions Not Contemplated

The equalization plan provided here is intended to be a nationwide plan adopted and adhered to by all U.S. Railroads. Except in unusual circumstances, it is not contemplated that any railroad should flag-out from the national plan, and railroad parties to this proceeding shall cancel any presently published exceptions, except where such exceptions may have specifically been approved in other Commission proceedings, or where specific tariff exceptions are published for specific traffic.

§2 -- CAR VALUE

(a) Depreciation and Salvage Value

The tank car life and salvage value previously approved by this Commission in [illegible], Mileage Allowances, Tank Cars, 337 I.C.C. 23 (1970), i.e., 30-year car life, 10 percent salvage value, amounting to a 3 percent depreciation rate, is reaffirmed for continued use.

(b) <u>Interest Factor</u>

Interest shall be calculated by reference to the interest cost for equipment trust certificates on railroad and privately owned cars as shown, for the most current 36-months available at the time of calculation, in the annual publication by Salomon Brothers entitled "Summary of Railroad Equipment Trust Financing." The interest rate for each offering over the 36-month period under the caption "Approx. Interest Cost %" shall be multiplied by the "Amount of the Issue" and the individual results shall be added together and their sum divided by the 36-month total of all entries under "Amt. of Issue." The result of this division, rounded two decimal digits, shall be the "interest factor" applied in the determination of annually updated mileage allowances.

The amounts included in allowances for amortization of principal plus interest on the depreciable portion of a car's value (90 percent) shall not decline as a car ages, but shall consist of equal amounts for each of a car's 30-years of life. This "annuity factor" will be expressed as a percent to 5 decimal digits.[2/] It will be developed from annuity tables by reference to the car's Allowance Car Value, salvage value, and to the current "interest factor" calculated under the preceding paragraph. Interest on salvage value (10 percent) shall be calculated by multiplying that value by the current "interest factor."

2/ Example: For an interest rate of .0800 (8.00%), the "annuity factor" $= .08 \div \left(1 - \frac{1}{(1.08)^{30}}\right) = .0888274$ (8.88274%).

(c) Allowance Car Value

The Allowance Car Value for cars built in the year 1968 and subsequent years shall be the original cost as represented to the original buyer by the manufacturer's invoice, or (for manufacturer-lessors' cars) that value certified, or which would have been certified, to the lessee for investment tax credit purposes.

For cars built prior to 1968, the 1968 Base Classification Value as determined by the Association of American Railroads (AAR) shall be the Allowance Car Value.

Appropriate amounts will be added to the value of owned or leased cars for initial-into-service transportation costs, and for capitalized original lining and capitalized additions and betterments.

(d) Tank Car Allowance Table

The Tank Car Allowance Table shall be constructed by dividing annual car cost by annual loaded tank car mileage (as determined in Section 4 below) using the following specifications:

(1) Age Groups. Tank cars shall be separated as between cars less than 30-years of age and 30-years of age and over, so that compensation for the latter may be calculated without provision for depreciation, or interest on other than salvage value.

(2) Allowance Value Brackets. Allowance value brackets shall be in $1,000 increments, i.e., $0 - $1,000; $1,001 - $2,000, etc., extending up to the currently applicable Maximum Valuation determined under (3) of this Subsection.

(3) Maximum Valuation. The Maximum Value Bracket on which allowances are to be calculated and paid shall be set for each year by applying a factor of 1.5 to the average price paid by the railroads for new freight cars acquired in the previous year, as calculated by the AAR. In the 12 months following July 1, 1979, and July 1, 1980, however, the maximum value brackets payable shall be $20,001 - $21,000, and $25,001 - $26,000, respectively. On and after July 1, 1981, the maximum value bracket shall be that determined under the first sentence of this paragraph.

(4) Mid-Point Value. The mid-point of each Allowance Value Bracket shall be used to determine the applicable mileage allowance rate.

(5) Application of Allowance Table to Allowance Car Value. The maximum allowance calculated for the Maximum Value Bracket determined under Section 2(d)(3) shall apply to all tank cars with allowance car values within or above that

bracket. [illegible], [illegible] be paid the allowance provided [illegible] bracket which encompasses such car's [illegible] Car Value, as determined under Section [illegible].

§3 -- MAINTENANCE AND OPERATING COST

(a) Lessor Cost To Be Based Upon The Experience of Four Major Tank Car Companies

The element included in allowances for lessor maintenance and operating cost (which the parties say was $748.21 p[illegible]r in 1976) will be developed for subsequent years from t[illegible] experience of the Four Major Tank Car Compa[illegible] [illegible] Car Line, Div. of ACF Industries, Gen[illegible]rican Transportation Corporation, North American Car [illegible], and Union Tank Car Company) in the same manner [illegible] the $748.21 factor. They shall study and develop the cost of their leased fleets for succeeding calendar years, which cost will be used as the measure of the maintenance and operating cost for leased and for shipper-owned cars.

(b) Lessee Cost

This cost (which the parties say was $34.88 in 1976) includes programmed maintenance of valves, non-discretionary cleaning costs (when, under the terms of

the lease agreement, the lessee is not reimbursed) and certain personnel expenses associated with monitoring and scheduling cars for repairs and inspections. It covers the cost of leased cars borne by the lessee in addition to the cost of such cars borne by the lessor.

These "lessee" costs will not be re-determined annually. The $34.08 figure shall be factored to the current year by updating 1976 experience, using the hourly earnings index for production or non-supervisory workers on non-agriculture payrolls published by the Bureau of Labor Statistics of the United States Department of Labor in the "Monthly Labor Review" for the latest month available by July 1. This cost shall be added to the "lessor cost" developed under sub-paragraph (a) in determining maintenance and operating cost for leased and for shipper owned cars.

(c) Maintenance and Operating Cost for Future Years

When allowances are first calculated pursuant to this decision, maintenance and operating costs shall be based on 1976 experience. In subsequent years, the allowance calculations shall be based upon the most current available experience in previous years. Beginning with the first annual update as provided in Section 7(a) hereof, a moving average for the three most current available years will be used. Each of the factors for

[illegible] years shall be indexed [illegible] available year [illegible] prescribed by the Commission in [illegible] Service Compensation – [illegible] [illegible] Charges [illegible] Railroad Revitalization and Regulatory Reform [illegible] decided August 1, 1977), for updating the repair cost of car-hire cars. 12

§4 — CALCULATION OF ALLOWANCES COVERING TRANSPORTATION USE

(a) Use of I&S 8406 Formula

The cost associated with non-transportation use shall be excluded from allowances by following the formula and procedures used in I & S 8406, Mileage Allowances, Tank Cars, supra. Tank car costs shall first be separated into time and distance-related components as follows:

Cost Factor	Allocation (1) Time	Allocation (2) Distance
Depreciation	60%	40%
Interest	100%	--
Repair & Maintenance	50%	50%

Only 95 percent of distance-related cost shall be included in allowances.

Time-related cost shall be reduced by applying a factor developed from the ratio of the current average of annual loaded mileage for tank cars (determined under (b) of this section) to the current average of annual loaded mileage for car-hire railroad cars on Class I railroads (determined under (c) of this section).

(b) <u>Development of Tank Car Loaded Mileage</u>

The Four Major Tank Car Companies shall conduct an annual study of mileage for the same tank car fleet which is studied for operating cost, as required by Section 3(a) above. Except as provided in (d) of this section the average loaded mileage per car shall be that developed for the fleet in each of the 3 most currently available years, totaled and divided by three.

(c) <u>Development of Loaded Car Mileage For Car-Hire Railroad Cars on Class I Railroads</u>

The AAR shall develop annual total loaded car miles for all of the car-hire railroad cars on Class I railroads, for each calendar year, from R1 Annual Reports--Schedule 531, line 12--as submitted to the ICC by Class I railroads, and summarized by the AAR. The average number of cars will be the number of cars owned by Class I railroads at the beginning and at the end of the year (as reported in Columns (b) and (k) of Schedule 417) divided by two. Car miles shall be divided by that average number of cars, and the result shall be the average mileage for that calendar year. Except as provided in (d) of this section, the average loaded mileage per car shall be that developed for the fleet in each of the 3 most currently available years, totaled and divided by three.

(d) Initial Use and Update

Notwithstanding the provisions of (b) and (c) of this section, the allowances initially published in compliance with this order shall be determined by reference to mileage for the year 1976, i.e., 5,775 loaded miles for tank cars and 9,294 loaded miles for all car-hire cars. The resulting time-related transportation use factor for initially published allowances shall, therefore, be 62.14%, i.e., 5,775/9,294. Beginning with and after the first annual update, as provided in Section 7(a), the moving averages developed in accordance with the provisions of (b) and (c) of this Section will be used to calculate all mileage factors used in the development of currently applicable allowances.

(e) Formula For Calculation

Allowances for each value bracket in the Tank Car Allowance Table, which is to be published in accordance with the terms of §2(d) hereof, will be determined by applying the following formula, where "Transportation Use Ratio" is developed as provided in this Section;

"Interest" as provided in §2(b), "Maintenance" as provided in §3 (a), "Depreciation" as provided in §2(a), and "Tank Car Mileage" as provided in §4(b):

$$\text{ALLOWANCES}^{3/} \text{ (for each mid-point value of of cars less than 30 years)} = \frac{TUR(I + 50\%M + 60\%D) + 95\%(50\%M + 40\%D)}{TCM}$$

$$\text{ALLOWANCES} \text{ (for each mid-point value of cars 30 years and over)} = \frac{TUR(I^{4/} + 50\%M) + 95\%(50\%M)}{TCM}$$

§5 -- HANDLING AND HOLDING EMPTY CARS

(a) Publication of Charges

The Mileage Allowance Tariff shall be amended to provide for charges applicable to the movement

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3/ "Interest" for less than 30 year cars is the result obtained by adding the product of the current interest factor times 10 percent of each value bracket's mid-point value to the product of the "annuity factor" expressed as a percent (reduced by 3.33333 percentage points) times 90 percent of each value bracket's mid-point value.

EXAMPLE: An 8.00% "interest factor" yields an 8.88274% "annuity factor" which, for a mid-point value of $9,500, would produce $550 in interest calculated as follows:

8.00% X (10% X $9,500) = $950	=	$ 76.00
(8.88274% - 3.33333%) X (90% X $9,500) = 5.54941% X $8,550	=	+$474.47
		$550.47

4/ "Interest" for cars 30 years and over is the product of the current interest factor X 10 percent of each value bracket's mid-point value.

and/or the holding of empty private tank cars on tracks at or adjacent to non-railroad facilities for cleaning, lining, relining, maintenance, modification or repair where the tracks are not owned or leased by the operator of the facility. The following new items (or their substantial equivalent) shall be added to the Mileage Allowance Tariff:

(a) The rules and charges in this item apply only to empty private tank cars consigned to non-railroad repair facilities, i.e., facilities for cleaning, lining, relining, maintenance, modification, or repair.

(b) The rules and charges do not apply to:

1) Empty private tank cars moving as revenue freight under the provisions of Item 125 series, parts A & B, paragraph B(2).

2) Empty private tank cars handled or held for carrier operating convenience.

3) Empty private tank cars en route to facilities for cleaning, lining, relining, or repair for heavy repairs following railroad damage.

4) Empty private tank cars en route to repair

facilities located on the premises of a shipping facility, provided that the empty car, after repair, is subsequently shipped from the facility in revenue freight service.

(c) The rules and charges in this item do not in any way supersede or override existing, or new, written contractual operating, side track, track lease, property lease, etc., agreements or tariffs that contain empty private tank car handling and holding provisions as part of the overall agreement.

(d) Charges applicable under these provisions will apply to empty private tank cars which the consignee has not ordered to his or her cleaning, lining, relining, maintenance, modification or repair facility (or the consignee owned or leased tracks in the vicinity thereof) before the expiration of 48 hours (not counting Saturdays, Sundays and holidays) after the consignee is notified that the car is ready for placement. This time calculation will start the first 7 AM subsequent to the carrier notification to the consignee that the empty private tank car is ready for placement and time

[illegible] [illegible] [illegible] [illegible] [illegible] any
[illegible] to [illegible] [illegible] have placed
or [illegible] the car [illegible] [illegible].
[illegible] will [illegible]:

(1) Supplementary [illegible] [illegible] of \$20 per car.

(2) Holding charge of \$1 [illegible] per calendar day or fraction thereof, [illegible] Saturdays, Sundays, and holidays.

(f) In the event the consignee [illegible] the car to tracks owned or leased by the consignee in the vicinity of the facility for cleaning, lining, [illegible] maintenance, modification or repair within the 48 hour period described under paragraph (d), there will be no supplementary handling charge for that movement; however, such cars will be subject to the supplementary handling charge at such time that the empty tank car is subsequently ordered and moved into the facility for cleaning, lining, relining, maintenance, [illegible] or repair or ordered moved from that facility to the tracks owned or leased by the consignee.

(g) Billing will be rendered [illegible] by the operator of the facility.

(b) Update

The same method and timing for updating the excess empty milerge charge provided in Section 1, paragraph (d) of this decision shall be used to update the $20 supplementary handling charge.

The percentage factor determined under Section 1(d) for calendar years subsequent to 1978 shall be applied to the $20 base year charge and the result, rounded to the nearest dollar, shall be published to become effective on or within two months after July 1 of each year.

§6 -- METHOD OF COMPENSATION

The method of compensation shall remain unchanged, i.e., allowances shall be paid on actual loaded car miles.

§7 -- PERIODIC UPDATE

(a) Nature, Method And Timing of Required Updating

The factors specified in Sections 1(d), 2(b)&(d)(3), 3(a)&(b), 4(b)&(c), and 5(a) shall be updated annually following the initial allowances published in compliance with this decision to become effective July 1, 1979. Except as otherwise provided in Section 2(d)(3) for the annual update of Maximum Value Brackets in 1980 and 1981, the annual

[illegible]

[illegible] factors with [illegible] mid-year [illegible] the effective date of the tariff change [illegible] than September 1.

(b) Factors to be Annually Updated

Updating must be made for: (1) Interest; (2) the Maintenance and Operating Cost; (3) the average loaded tank car mileage; (4) the [illegible] Transportation Use Factor; (5) the Excess Empty Mile Charge; (6) the Supplementary Handling Charge for Empty Tank Cars; and (7) the Maximum Value Bracket.

(c) Voluntary Changes

The formula prescribed for determining and updating car costs incorporates data from various designated sources. If there are changes in the nomenclature or format within any designated source, or the source itself is altered or discontinued, the railroad respondents or whichever party is given responsibility for preparing affected data may, without our prior approval, continue to draw the same basic data from the same redesignated or rearranged source, or from different but similarly authentic sources, subject to the right of any affected person to petition for relief appropriate

in the case of any [illegible] or procedures. Similarly, railroad respondents shall have the [illegible] to protest, to make non-prejudicial changes in any tariff [illegible] procedure approved here.

We have reviewed the agreement set forth above and in the joint petition, as well as the underlying data submitted by the parties in support. Based upon this record we find that private tank car allowances determined under this agreement will be reasonable and otherwise in accordance with 49 U.S.C. §§ 11122 and 10747, and that our adoption of this agreement is warranted.

We shall retain continuing jurisdiction of this matter for the purpose of securing compliance with the terms of this agreement and updating of allowances.

This decision does not significantly affect the quality of the human environment and is not a major regulatory action under the Energy Policy and Conservation Act of 1975.

IT IS ORDERED:

The joint petition is granted. The Commission adopts the private tank car mileage allowance agreement as set forth in this decision.

All railroads party to this proceeding shall publish on three days' notice, to become effective not later than July 1, 1979, and to remain in effect until further order of this Commission, tariff items in compliance with the terms and substance of the agreement adopted here. The railroads shall thereafter, by joint railroad and car-provider conference, review

[illegible]

[illegible]

be interpreted and applied to [illegible] most closely the required results.

This order shall become effective on the day it is served.

This proceeding shall remain open for the purpose of securing compliance with the terms of the [illegible].

By the Commission: Chairman O'Neal, Vice Ch[illegible] Brown, Commissioners Stafford, Gresham, Clapp, and Christian.

H. G. HOMME, JR.

(SEAL) Secretary.